

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	8:04CR262
)	
v.)	
)	
BRANDY K. BRENTON,)	MEMORANDUM OPINION
)	
Defendant.)	
<hr style="width: 40%; margin-left: 0;"/>)	

This matter is before the Court on defendant's motion for disqualification which has affixed to it a motion under 28 U.S.C. § 2255 to vacate, set aside or correct sentence by a person in federal custody (collectively Filing No. 145). On January 23, 2008, Judge Smith Camp entered an order which in effect granted the defendant's motion for disqualification by recusing herself from further proceedings in this case (Filing No. 149). On that date by Filing No. 150, this case was reassigned to the undersigned judge.

The attached § 2255 motion is simply a carbon copy of the defendant's motion to vacate under 28 U.S.C. § 2255 filed October 19, 2007 (Filing No. 140), which motion was reviewed by Judge Smith Camp pursuant to Rule 4(b) of the rules governing § 2255 proceedings for the United States Courts. Her order (Filing No. 143) summarily denied defendant's motion as untimely in that it had been filed more than a year after the date on which her judgment of conviction became final. Defendant has not

taken any exception to that finding. Defendant's present filing clearly is more than one year after her conviction became final and so suffers from the same disqualification.

If defendant has submitted this matter seeking reconsideration of Judge Smith Camp's order of October 23, 2007, her request will be denied. If she intends this to be a second or successive motion under § 2255, the Court notes that defendant has failed to obtain an order from the United States Court of Appeals from the Eighth Circuit authorizing the defendant to file such a second or successive application and authorizing the district court to consider the application, and accordingly, it will be denied.

Defendant's motion for appointment of counsel and for a hearing (Filing No. 146) and her motion asking the Court to take judicial notice of non-waiver via affidavit of attorney-client privilege (Filing No. 147) are moot and will be denied. A separate order will be entered in accordance with this memorandum opinion.

DATED this 5th day of February, 2008.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court